

Introduction to Real Estate

Chapter 2: Property Rights & Ownership

Standard: **The different types of property ownership and the need for deeds**
(CIP #08.1701-0201)

- Objectives:**
- Understand the concept of bundle of rights.
 - Identify the different types of freehold interests.
 - Define the different types of property ownership.
 - Understand the steps leading to adverse possession.

Real Estate Ownership & Interests

Information: Ownership in real estate is a basic right and privilege of the American people, but a lack of understanding of this privilege can cause a person to lose all that they have worked for. The many types of ownership can be difficult to understand, but that knowledge, once learned, can be worth its weight in gold.

Bundle of Rights

When an individual or group purchases a piece of real property, in addition to the physical property, they receive various rights of ownership. These rights are known in real estate as **the bundle of rights**, and includes the four following categories:

Possession: The right to enter and occupy the property, to invite others to enter and/or occupy, and the right to exclude others.

Use or Control: The right to use the property for legal purposes, such as living, stores, farms, mining—or not to use at all.

Quiet Enjoyment: The right to hold title without any other person, such as a former owner, claiming an interest in the property. *(Before you buy the property, a Title Company researches all previous owners for the last 40 years, to insure you have the property “free and clear.” You then buy “Title Insurance” to protect your ownership interest.)*

Disposition: The right to keep the property, sell it, lease it, give it away, etc.

Different Types of Freehold Interest

An individual may hold a freehold (ownership) interest in a property, but may not own it free and clear. The following are different forms of freehold interest:

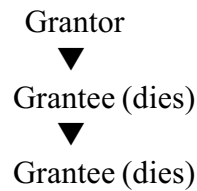
Fee Simple: The most complete form of ownership and individual can hold under the law; it is inheritable.

Fee Simple Qualified or Defeasible: The extent of one's ownership is limited due to some condition or covenant. It is also an inheritable estate. An example would be if land were given to a minor child with the condition that title could not pass until the child reached legal age.

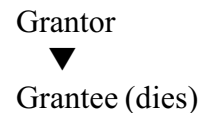
Life Estate: This estate cannot be inherited. The holder of the life estate, or **grantee**, has the right to use property as if they own it until they die. At that time the estate reverts back to the original owner (grantor). The holder also has the right to sell, lease, or encumber (indebt) the property, but these interests will automatically terminate at the time of the holder's death. The grantor may also create a series of life estates, in which the property transfers to another designated individual upon the death of the grantee. However, at the death of all of the named grantees (can be any number), the full interest

would revert back to the original grantor. However the grantor may have named the last person in the series to be the ultimate owner; they would receive a fee simple title upon the death of the previous life estate owner.

Situation #1

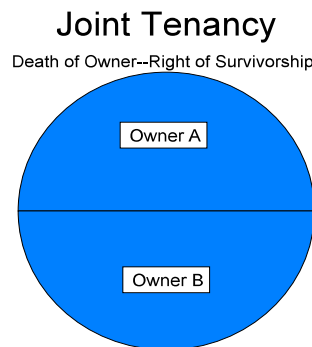
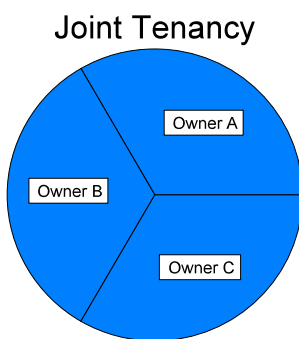


Situation #2



Different Types of Property Ownership

1.) Severalty: An individual owning property in their name only, owns it in **severalty** or **sole ownership**. All other forms of ownership are classified as co-ownership. The



following are examples of co-ownership:

2.) Joint Tenancy: Joint tenancy includes the full right of survivorship for each owner. If two individuals owned the property together, if one of them dies, the other automatically owns the property in severalty without probate. If three individuals

owned the property together, when one of them died, the ownership would then be equally divided between the two living owners.

Any joint owner may sell their interest without the consent of other joint owners unless specifically prohibited by the deed. This can pose a problem if one of the owners sells his share to an individual who does not share the same ideas about how the property is to be used or managed. There can be any number of joint tenants; an example would be 52 different owners of a houseboat. Joint tenancy takes precedence over a will.

All of the four following must exist in a joint tenancy:

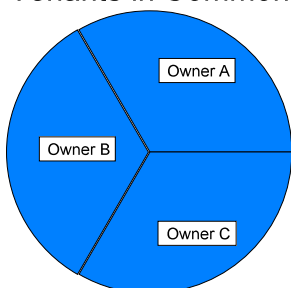
Possession: Full and undivided rights of possession for all owners.

Interest: Each owner holds an equal portion of ownership.

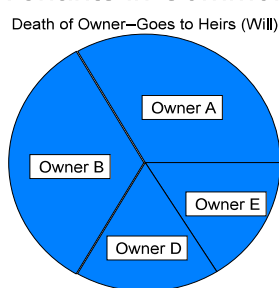
Time: All grantees must become owners at the same time.

Title: There is only one deed, but each owner has a copy of it.

Tenants in Common



Tenants in Common



3.) Tenants in Common: All owners have full and undivided right of possession regardless of their percentage of ownership. All owners will be assumed to hold equal percentage, unless stated otherwise in the deed. Ownership can be taken at any time, with each

owner having their own deed. There is no right of survivorship, thus the future estate must be determined by will, trust, probate, etc. If there is no indication as to how title will be taken, most states will presume the owners to be tenants in common.

4.) Tenants by the Entirety: Most nearly like joint tenancy, including the right of survivorship; however, it pertains only to husband and wife. Neither the husband nor the wife can dispose of their share of the estate without the agreement of the spouse.

5.) Community Property: Community applies only to a husband and wife, and is used only in a few states (California, Idaho, Arizona, Texas, New Mexico, Louisiana, Wisconsin, and Nevada). It is based on the concept that husband and wife are “equal partners,” each owning a half interest in any property obtained during their marriage. Any property acquired before marriage, or by gift or inheritance during the marriage can be owned in severalty or with other partners and not include the spouse.

6.) Partnership: A **partnership** is not considered a legal person, and the partners could be sued individually. A **general partner** (one who has full financial liability and full right of decision making authority) can be sued for the full amount of the suit. **Limited partners** (one whose financial liability extends only to the amount of his investment and who has no decision making power) will not lose more than their investment.

Other forms of co-ownership include the following:

7.) Joint Venture: Where two or more parties combine to carry out a single business project. Examples of joint venture may be the pooling of resources to build an apartment complex, an agreement by a property-owner, bank, and developer to allow construction on the property with the purpose of receiving the agreed-upon price for the land upon completion (the property-owner takes second position to the bank, and risks a loss if the developer fail to meet his end of the agreement).

8.) Corporation: This is a form of ownership whereby a person or persons join for business purposes. It creates a single, legal person, rather than a natural person, regardless of how many officers or agents may be in the corporation. Ownership is held in the form of stock, and offers some protection of personal assets.

Gifting Property

A method by which a person can give real property as a gift is **dedication**. This allows for the transfer of real property from a private individual to the government or a special interest group, i.e., a church. **Voluntary dedication** may specify exactly what the property is to be used for or it will revert back to the benefactor or grantor. A developer may dedicate part of his land to the city or county when getting approval to develop a subdivision. This is known as **statutory dedication**.

Steps Leading to Adverse Possession

Adverse possession is based on the concept that land is too valuable to be left unattended for long periods of time. A person may obtain title to a piece of unused property by entering and possessing it for a statutory period of time. The statutory period in the United States ranges from 3 to 30 years. (In Utah, that period is 7 years.) Government property **cannot** be acquired through adverse possession.

In order to make a valid claim of adverse possession, the adverse possessor must be able to show that his possession was:

- 1.) **Open and notorious**—meaning that the owner or anyone else must be able to plainly detect the possession.
- 2.) **Continuous use.**
- 3.) **Hostile**—without the owner's permission. This does not mean that the parties must be fighting, it means that the possessor is on the property and the owner has made no attempt to stop them;
- 4.) **Exclusive**—meaning that the adverse possessor must act as though he owns the property.

Important!! An individual attempting to obtain title to property through adverse possession must, in many states—including Utah—**pay taxes on the property during the time of possession.**

Incidents where adverse possession may take place include using a parcel of land to access your land without the owner's permission. If the owner of the property being crossed were to put up “No Trespassing” signs or ask the adverse possessor to discontinue use of the road, the adverse possessor could claim no right to the property. Another situation might be a fence encroaching on the property of a neighbor. Should no objections be made to the encroachment, the owner could lose title to that portion of his property once the statutory time has been met.

PRACTICAL APPLICATION

1. Contact local real estate businesses—discuss the type of ownership. Try to locate three different types of ownership. Examples may be a corporation, partnership, and limited partnership. (Frequently even the large franchise businesses, such as Century 21 or ReMax are owned by their members on a local basis.) Either prepare a written report of your findings, or present them to the class orally.
2. Discuss situations of adverse possession with someone in your community (i.e., lawyers, county recorder, old-timer) and either invite them to visit the class or be prepared to discuss them in a group.

Forms of Real Estate Ownership Quiz

1. Ownership in _____ means that title is held by one natural person or legal entity.
2. In a _____, each party holds separate, undivided interest, but shares possession with other tenants and each may sell his or her own individual interest.
3. _____ indicates two or more owners with the right of survivorship.
4. The four unities of _____, _____, _____, and _____ must be present in a joint tenancy.
5. Some states recognize a _____, which is actually a joint tenancy between a husband and wife.
6. In _____ states, property acquired by a husband and wife during their marriage are owned one-half by each, while property acquired prior to the marriage or by inheritance is considered separate property.

Introduction to Real Estate

Chapter 2: Property Rights and Ownership

Standard: Various types of contracts and the important part they play in real estate
(CIP #08.1701-0202)

- Objectives:**
- Accurately define contract.
 - Understand the four elements necessary for a contract to be a legal, valid document.
 - Discuss the use of contracts in real estate.

Contracts in General & Real Estate Contracts

Information: You will be involved in numerous contracts throughout your life. Understanding some of the basic legal issues in contract law is therefore vital to you. You will not always be able to check contract terms with an attorney. The price of misunderstanding, however, can be high.

Contract

A **contract** is a binding agreement or promise to do something. To be a valid, legal contract, a document must contain four elements:

Four Elements Necessary for a Contract to be a Legal, Valid Document

1.) **Agreement.** Agreement occurs when one party to a contract makes an offer or promises to do something and the other party accepts. For example, suppose a buyer offers to buy one of the properties you have listed. There is no contract until the offer is accepted and signed by both the buyer and the seller. If the seller should choose to change any of the terms of the offer, a **counteroffer** has been created.

2.) **Consideration.** Consideration is what is exchanged for the promise. The money the buyer gives as a deposit and the terms for payment in the purchase agreement are valuable consideration and causes the contract to be binding. Payment does not need to be in the form of money; it may be a trade of other real property, or even personal property, such as an automobile.

3.) **Capacity.** Capacity means that you are legally able to enter into a contractual agreement. By law, minors, intoxicated persons, and insane persons cannot enter into valid contracts. If they do make themselves parties to contracts, the agreements can be considered void.

4.) **Legality.** The final contract element is legality. For a contract to be valid, it must be legal. For example, it cannot have any provisions that are illegal or result in illegal activities.

Real Estate Purchase Contracts, commonly referred to as REPC's (rep-sees), must contain one other element in order for a contract to be valid. All contracts dealing with the purchase or sale of real property **must be in writing**. A paper trail in real estate can eliminate a great number of misunderstandings. The Statute of Frauds also requires any contract must be in writing for the purchase or sale of personal property for more than \$500, and any contract that takes longer than one year to perform.

Contract Elements NOT Required to be a Legal, Valid Document

Although these are **not required elements** of a real estate contract, all real estate personnel should be familiar with and be able to use the following clauses:

Known as “subject to...” clauses, a **contingency clause** allows the parties to limit their liability if certain events occur or fail to occur. It is wise to indicate a date for performance, automatically eliminating the contingency if it is not met. The following are examples of common contingencies in real estate:

1. This offer is subject to the buyer obtaining financing...
2. This offer is subject to a property inspection...
3. This offer is subject to the appraisal being at or above...
4. This offer is subject to approval by...(usually a wife, husband, or partner)

“As Is” Clause. Usually refers to the buyer accepting the property in its present condition. However, if conditions have been concealed, the seller will still be liable.

“Time is of the essence” Clause. This means that all dates are firm and must be met or the contract may be considered voidable.

Use of Contracts in Real Estate

Fraud may be committed in a variety of ways:

Intentional fraud involves the willful intent to commit fraud, either by making deliberate misrepresentations, or choosing to hide or omit information, such as structural defects that may not be obvious to the buyer. Penalties for intentional fraud include the awarding of damages or money, additional fines, and even imprisonment.

Constructive fraud is a situation where the guilty party had no evil intent to misrepresent, however with reasonable care the act may have been avoided. Penalties differ from intentional fraud in that fines and imprisonment cannot be levied.

Puffing is a gross exaggeration which is not considered misrepresentation. Example, an agent says to a buyer, “You won't find a nicer home in the county.” It is easily recognized by a reasonable person as an exaggeration.

* Utah is second to New York in real estate fraud. Some entities have considered moving to fingerprinting to ID persons.

Remedies

Once fraud has been committed and proved, there are several **remedies** that can be applied to benefit the harmed party:

1.) Rescission. The annulment of the existing contract, returning all parties to their original position as if there had been no contract.

2.) Partial performance. The injured party agrees that no further performance will be required by either party.

3.) Suit for damages. The injured party is awarded damages if he can show actual loss.

4.) Suit for specific performance. The guilty party is ordered by the court to complete the contract as agreed.

5.) Liquidated damages. These items must be anticipated and the default and its penalty clearly stipulated in the contract. Examples may include: Late penalty in a loan; Penalty in a building construction contract for breaching the completion date; or forfeiting of earnest money if the buyer fails to perform on his agreement to purchase a property.

6.) Mediation or arbitration by a disinterested party are other options open to the parties in a dispute over a contract.

PRACTICAL APPLICATIONS

1. Obtain three copies of contracts from the library, real estate office, office supply store, or any other source, and evaluate mark the elements that must exist in order for that contract to be valid.

2. Create a simple contract that:

- (1) includes the essential elements of a contract;
- (2) includes any one of the above clauses;
- (3) includes a remedy in case of breach of the contract.

Introduction to Real Estate

Chapter 2: Property Rights and Ownership

Standard: Deeds and the part they play in real estate
(CIP #08.1701-0203)

- Objectives:**
- Define deed.
 - Identify the items necessary to make a deed valid.
 - Identify the uses and different types of deeds.

Deeds

Information: A **deed** “conveys” or gives interest and is tangible evidence of one’s ownership in a piece of real property.

Deed

A **deed** “conveys” or gives interest and is tangible evidence of one's ownership in a piece of real property. Frequently, people will say they “hold title” to a parcel of property, but this title must be proven by producing a valid deed. **There is no written document called a “title.”**

Items Necessary to Make a Deed Valid

In order for a deed to be considered valid, the following items must be incorporated into a deed:

1. **Intent of the Grantor.** This aids the courts in determining what the grantor was trying to do with his property, and must be established by each of the following items.
2. **Signature of the Grantor.**
3. It must be in **writing.**
4. It must contain a **granting clause**, (i.e., “I convey”) that gives ownership interest
5. Both the grantor’s and grantee’s **names must be clearly written** on the deed.
6. An **adequate description** of the property must appear on the deed.
7. **Delivery** must be made to the grantee.
8. **Consideration** should be included, although the exact amount is not necessary. (The phrase, “Ten Dollars and other good and valuable consideration” is frequently used to show there was consideration, while the actual amount paid for the property is not required.

The following items are **NOT** necessary to make a deed valid, but are recommended in order to help establish the validity of the deed:

- | | |
|--------------------------------------|------------------------|
| ● Signature of the Grantee | 1. Tax mailing address |
| ● Recording** | 2. Legal description |
| ● Acknowledgment (notary or witness) | 3. Notarized |
| ● Date | |

****3 ingredients to make it recordable:**

Types of Deeds and their Uses

There are several types of deeds used in real estate, but for purposes of simplicity, only those most frequently used will be discussed:

1.) Quit Claim Deed. The least powerful deed, the Quit Claim Deed conveys all interest in a piece of property without giving any guarantees. It is most commonly used to **remove clouds**, or discrepancies from a title.

2.) General or Full Warranty Deed. This is the **most complete transfer of ownership** and has the greatest protection (strongest deed). It covers the period of time from the conveyance back to the Patent (original) Deed conveyed by the government.

3.) Special Warranty Deed. This deed warrants only against encumbrances arising during the period of the grantor's ownership. **Called the "As Is" deed**, it provides no warranties and is less powerful than the General Warranty Deed. Any defects that may have occurred prior to the grantor's ownership may still be valid but have no protection.

4.) Gift Deed. This deed has to do with the conveyance of property for love and affection.

PRACTICAL APPLICATIONS

1. Explain why some of the items that are not necessary to make a deed valid are recommended.
2. Using the deeds described above, explain the circumstances that you believe might require the use of that particular deed.